IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

OP.No. 19479 of 2002(R)

PETITIONER:

1. P.M.MOHAMMED KOYA, FORESTER,
   FLYING SQUAD DIVISIONAL OFFICE, KOTHAMANGALAM.

2. M.A. SASIDHARAN NAIR, FOREST GUARD,
   MUNNAR WILD LIFE DIVISION OFFICE, MUNNAR

BY ADV. SRI.T.A.SHAJI
SRI.M.A.ASIF

RESPONDENTS:

1. THE CHIEF FOREST CONSERVATOR
   (PROTECTION), FOREST DEPARTMENT, GOVERNMENT OF
   KERALA, THIRUVANANTHAPURAM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
   DEPARTMENT OF FOREST AND WILD LIFE,
   THIRUVANANTHAPURAM

3. THE DIVISIONAL FOREST OFFICER,
   FLYING SQUAD, DIVISIONAL FOREST OFFICE,
   KOTHAMANGALAM.

4. THE ASSISTANT WILD LIFE WARDER,
   MUNNAR WILD LIFE DIVISION OFFICE, MUNNAR

G.P. SHRI.ANU SIVARAMAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/3/2007, THE COURT ON 11.4.2007 DELIVERED THE FOLLOWING:

O.P.NO.10480/02.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE ORDER DTD.15.6.99. OF R1.

P2. COPY OF THE APPEAL OF P1 DTD.10.1.2000 BEFORE R2.

P2(A) COPY OF THE APPEAL DTD.10.1.2000 BY P2 BEFORE R2.

P3.CP JUDGMENT IN O.P.NO.5642/00.

P4. COPY OF THE ORDER DTD.12.7.01.

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P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.19479 of 2002

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Dated this the day of April, 2007

J U D G M E N T

In this original petition the petitioners who are a Forester and a Forest Guard respectively in the services of the Forest Department of the Government of Kerala are challenging Exts.P1 and P4 orders of the 1st respondent-Chief Conservator of Forests (Protection) and the Government of Kerala, represented by the 2nd respondent, which are the order of punishment and order in appeal respectively, passed against the petitioners in disciplinary proceedings against them, which resulted in imposition of punishment of recovery of loss caused to the Government on account of their misconducts.

2. By Ext.P1, the petitioners and others were punished for misconducts proved against them in a disciplinary enquiry. The charges against the petitioners were:

(a) They permitted auctioneers of timber to

remove timber which were not included in the auction sale; and

(b) failed to report to the superior officers that the timber removed included timber not accounted for and timber bearing duplicate numbers.

3. The petitioners raise three contentions:

(a) The alleged irregularities happened during 1985-86 whereas the petitioners joined duty in the station only in November, 1988 and April, 1989 respectively.

(b) By delaying the enquiry for 17 years, the respondents allowed the real culprits to escape from punishment by retirement or leaving office.

(c) The charges have not been proved against the petitioners by any acceptable evidence.

4. The 1st contention is clearly unsustainable by the petitioner's own showing. As noted in Ext.P4 order in the appeals filed by the petitioners themselves they have contended that they have only issued subsidiary passes as per the stock number and lot number mentioned in the main passes issued

by the Ranger Officer as per directions from the Forester. This itself shows that at the time of commission of the misconducts alleged against them they were in fact working in the station where the misconducts took place.

5. I do not find any merit in the 2nd contention also. I find that action has been initiated on the basis of an enquiry report of the Chief Conservator of Forests (Vigilance) dated 8.9.1989. Even according to the petitioners, they joined the station where the incidents leading to the misconducts occurred only in 1988 and 1989. Thereafter a charge memo was issued, enquiry was conducted, report obtained and Ext.P1 order of punishment was issued on 15.6.1999. The appeal dated 10.1.2000 preferred by the 1st petitioner and similar appeal by the 2nd petitioner were dismissed by Ext.P4 order dated 12.7.2001. The petitioners have also not raised any contention on the ground of delay in their appeals before the Government. As such, there is no merit in that contention also.

6. As far as the last contention regarding the innocence of the petitioners is concerned, they have not chosen to produce a copy of the enquiry report and to challenge the findings therein. I would get jurisdiction to interfere with the findings only if the findings are perverse. When the petitioners have not chosen even to produce the enquiry report to point out any perversity therein, I am unable to countenance the contention regarding innocence put forth by the petitioners in this writ petition.

7. Further, a reading of Ext.P1 and particularly Ext.P4 does not give much leeway for the petitioners to raise such contention also. Their contention was that since the main passes were with the Range Officer and they did not have any registers with them, they were unable to detect the presence of duplicate logs. This was found to be disproved on the basis of the statements of the petitioners themselves in the appeal memorandum to the effect that it is as per the stock number

measurements etc. in the main passes given by the Ranger Officer that subsidiary passes were issued by the petitioners. As such, far from being perverse, the findings are very much substantiated by materials on record which have been convincingly discussed in the impugned orders which do not call for any interference at the hands of this court in this writ petition on any of the grounds stated therein.

Therefore, I do not find any merit in any of the contentions of the petitioners in this writ petition and the same is dismissed. However, I refrain from ordering any costs.

Interlocutory application stands closed.

sdk+ S.SIRI JAGAN, JUDGE